

EXHIBIT M

O'Leary, Denis 1/9/2008 9:30:00 AM

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| <p>1 UNITED STATES DISTRICT COURT</p> <p>2 NORTHERN DISTRICT OF CALIFORNIA</p> <p>3 SAN FRANCISCO DIVISION</p> <p>4 CASE NO. C07-04580 MHP</p> <p>5 _____x</p> <p>6 SECURITIES AND EXCHANGE COMMISSION,</p> <p>7 Plaintiff,</p> <p>8 -v-</p> <p>9 KENT H. ROBERTS,</p> <p>10 Defendant.</p> <p>11 _____x</p> <p>12</p> <p>13 January 9, 2008</p> <p>14 9:30 a.m.</p> <p>15 Deposition of DENIS O'LEARY, taken by</p> <p>16 Counsel for the Defendant, at the offices of</p> <p>17 Cooley Godward Kronish LLP, 1114 Avenue of the</p> <p>18 Americas, New York, New York, before Anita T.</p> <p>19 Shemin, a Certified Shorthand Reporter and</p> <p>20 Notary Public within and for the State of</p> <p>21 New York.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p>1 INDEX</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 Denis J. O'Leary Mr. Stephens 6</p> <p>4 Mr. Cohen 236</p> <p>5</p> <p>6 EXHIBITS</p> <p>7 Exhibit 67, Handwritten notes, Bates 57</p> <p>8 SEC00237 - 239</p> <p>9 Exhibit 68, Form re options granted to O'Leary 115</p> <p>10 Exhibit 69, Form 8-K 133</p> <p>11 Exhibit 70, Document, Bates MFESEC016548 - 550 138</p> <p>12 Exhibit 71, 10/11/06 press release 143</p> <p>13 Exhibit 72, Document, FMEUSA0016778 - 782 152</p> <p>14 Exhibit 73, Samenuk employment agreement 154</p> <p>15 Exhibit 74, Notes, SAMENUK 3046 - 3048 169</p> <p>16 Exhibit 75, Form 8-K 183</p> <p>17 Exhibit 76, 5/25/07 press release 225</p> <p>18 Exhibit 77, Documents, MFEKRS-DOL0001 - 0153 228</p> <p>19 Exhibit 78, Document, MFEKRS-RP00033 - 034 231</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p>1 APPEARANCES:</p> <p>2 UNITED STATES SECURITIES AND</p> <p>3 EXCHANGE COMMISSION</p> <p>4 Attorneys for the Plaintiff</p> <p>5 100 F STREET, N.W.</p> <p>6 Washington, D.C. 20549-4631</p> <p>7 BY: MATTHEW D. STRADA, ESQ.</p> <p>8 STEPHEN L. COHEN, ESQ.</p> <p>9</p> <p>10 COOLEY GODWARD KRONISH LLP</p> <p>11 Attorneys for the Defendant</p> <p>12 Five Palo Alto Square</p> <p>13 3000 El Camino Real</p> <p>14 Palo Alto, California 94306-2155</p> <p>15 BY: NEAL STEPHENS, ESQ.</p> <p>16</p> <p>17 WILSON SONSINI GOODRICH & ROSATI, P.C.</p> <p>18 Attorneys for the Witness</p> <p>19 650 Page Mill Road</p> <p>20 Palo Alto, California 94304-1050</p> <p>21 BY: RODNEY G. STRICKLAND, JR., ESQ.</p> <p>22 CLAYTON BASSER-WALL, ESQ.</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 OSMANY CABRERA, Videographer</p> <p>KENT ROBERTS</p> | <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between the attorneys for the respective</p> <p>4 parties hereto that all rights provided by the</p> <p>5 C.P.L.R., including the right to object to any</p> <p>6 question, except as to the form, or to move to</p> <p>7 strike any testimony are reserved to the trial</p> <p>8 of this action.</p> <p>9 IT IS FURTHER STIPULATED AND AGREED</p> <p>10 that this deposition may be sworn to by the</p> <p>11 witness being examined before a Notary Public</p> <p>12 other than the Notary Public before whom this</p> <p>13 deposition was begun, but the failure to do</p> <p>14 so or to return the original of this</p> <p>15 deposition to counsel shall not be deemed a</p> <p>16 waiver of any rights provided by the C.P.L.R.</p> <p>17 and shall be controlled thereby.</p> <p>18 IT IS FURTHER STIPULATED AND AGREED</p> <p>19 that the filing and certification of the</p> <p>20 original of this deposition are waived.</p> <p>21</p> <p>22 *****</p> <p>23</p> <p>24</p> <p>25</p> |

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1 been made a member of McAfee's board; is that
 2 correct?
 3 A That is correct.
 4 Q Okay. Would you term it a clerical error
 5 when the board approves the July minutes in October,
 6 and the July minutes indicate that you are starting
 7 on the board effective as of July 17th? Is that a
 8 clerical error?
 9 MR. COHEN: Object to the form of the
 10 question.
 11 THE WITNESS: Can I answer it?
 12 A I don't know if it was a clerical error or
 13 not. I believe that the -- that the use of the 17th
 14 instead of the 15th was poor process administration
 15 versus anything by design. If you want to call that
 16 clerical, I am with you on the definition of
 17 clerical. I mean, I don't know if a clerk
 18 necessarily did it or whether the error was that
 19 the -- that the GC should have spotted this. I
 20 can't tell you who in a management chain should have
 21 spotted it, but everything I am aware of suggests to
 22 me that there was no design to do this
 23 intentionally. Certainly no one -- the person who
 24 would benefit from this primarily would have been me
 25 monetarily if the option came into the money, and

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1 from that standpoint, the only indirect benefit
 2 would have been somebody telling me they did this
 3 for me so they could get some retribution.
 4 Q And Mr. Roberts did?
 5 A And no one asked for a special deal with
 6 my option. Had they, I would have rejected them
 7 immediately. Probably would have had them fired for
 8 offering.
 9 Q Has the SEC ever contacted you to ask you
 10 any questions about your July 2003 option?
 11 A No, I do not believe so.
 12 Q They never suggested that they would
 13 charge you with any kind of fraud regarding your
 14 options?
 15 A No, they did not.
 16 Q To your knowledge, have you ever been
 17 under investigation by the SEC for any actions that
 18 you took regarding stock options at McAfee?
 19 A Not to my knowledge
 20 Q And the DOJ. If I understand your prior
 21 testimony, they never contacted you about anything?
 22 A No, they did not.
 23 Q Including talking about your 2003 option.
 24 correct?
 25 A No.

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1 Q So there is -- there has been no
 2 suggestion from the DOJ that you would be charged
 3 with any fraud or anything regarding McAfee's option
 4 program and your role as a director, correct?
 5 A No.
 6 Q Have you ever considered resigning from
 7 McAfee's board regarding the facts surrounding your
 8 July 2003 option grant?
 9 A No.
 10 Q Has anyone ever suggested to you that you
 11 should consider resigning from McAfee's board
 12 regarding your July 2003 grant?
 13 A No.
 14 Q Has anyone ever suggested to you that you
 15 should suffer any form of punishment at all
 16 regarding the facts surrounding your 2003 option
 17 grant?
 18 A No.
 19 Q When did you -- well, let me strike that,
 20 and I will reask a different question.
 21 When you were deposed by the SEC in June
 22 of 2006, had the issue with your option been
 23 identified by anybody?
 24 MR. STRICKLAND: Objection, calls for
 25 speculation.

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1 MR. COHEN: Join and object to the form of
 2 the question.
 3 BY MR. STEPHENS:
 4 Q So let me reask: To your knowledge, as
 5 you sat there in June of 2006 speaking with the SEC,
 6 had anyone identified any issues with or potential
 7 issues with the date of your July 2003 option grant?
 8 A I don't know.
 9 Q Okay. When did you first become aware
 10 that there might be an issue with your option?
 11 A Just prior to my interview with Bob
 12 Gooding. And I will have to find out exactly when
 13 that was, but it was after we had formed the Special
 14 Committee and just prior to a board meeting when I
 15 was in California. I became aware that some of the
 16 director options may have been mispriced as they
 17 were going through the work checking all of the
 18 options, and that included that was my original
 19 initial grant.
 20 Q Okay. And how would I tie down what that
 21 date was?
 22 A I could find out when the board meeting in
 23 California was that I spoke to Gooding Howrey, but
 24 my guess would have been it would have been the July
 25 board meeting.

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1 Q We have some minutes that we will go
2 through.
3 A It wasn't at the board meeting, it was
4 while I was in California. We met outside the board
5 meeting, they had asked to speak to myself and a
6 couple of the directors to follow up on what they
7 had found in their work on all of the options.
8 Their investigation included all of the options of
9 the company, and they met with me, and just prior to
10 that meeting, they told me they would like to meet
11 with me. This is probably within a week of that
12 meeting. They said they would like to meet with me
13 while I was in California to discuss this because
14 some of my options may have been mispriced.
15 Q Okay.
16 A That was the first time I had heard
17 anything to do with me and a problem with an option
18 price.

19 Q Okay. All right. We may be able to nail
20 that down with a little bit more clarity later
21 today.
22 Going back to some of the questions that I
23 asked about the SEC and the DOJ, just more broadly,
24 to your knowledge, have you ever been under
25 investigation by any federal agency for anything?

1 AFTERNOON SESSION
2 (Time noted: 1:15 p.m.)
3 THE VIDEOGRAPHER: The time is now 1:15,
4 and this begins Tape No. 3 in the videotaped
5 deposition of Denis O'Leary.
6 BY MR. STEPHENS:
7 Q Mr. O'Leary, let me just go back and ask a
8 couple of follow-up questions on a couple of the
9 other topics that we spoke about.
10 One of the things that we had talked about
11 was the discussion you had with Mr. Samenuk
12 regarding the 2000 focal grant?
13 A Yes.
14 Q And the first conversation occurred in
15 like the late May of 2006 time frame?
16 A Right.
17 Q Okay. After that conversation, did you
18 take any steps to secure any documents from
19 Mr. Samenuk that might relate to the handling of the
20 2001 option?
21 A No.
22 Q Okay. Did anyone you know take his
23 computer and mirror image the hard drive at that
24 point in time?
25 A No.

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1 A No.
2 Q Or any state agency?
3 A No, nothing.
4 Q Never been convicted of a crime?
5 A I never had a parking -- other than a
6 parking violation, I never had a speeding ticket in
7 my life.
8 Q All right. You obviously don't live in
9 Mountainview?
10 A I do it on the track.
11 MR. STEPHENS: I have 12:15. Let's go off
12 the record for a second.
13 THE VIDEOGRAPHER: The time is now 12:17.,
14 We are going off the record.
15 (Luncheon recess)
16 (Time noted: 12:17 p.m.)
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1 Q Was he denied access to any of McAfee's
2 computer databases following that discussion?
3 A Well, I should say we did take steps
4 because when we did our investigation on options,
5 everyone was included, so we asked -- the scope of
6 the request that we asked internal audit and later
7 Gooding Howrey was to include everybody, every
8 option, ten years. We didn't give anyone a pass.
9 Q Okay. But in late May of 2006 --
10 A That was late May of --
11 Q So to your knowledge --
12 A We called Gooding Howrey the day we
13 became aware of Kent's event.
14 Q Okay. That day, someone took Mr. Roberts'
15 laptop, correct?
16 A Yes.
17 Q That day, did anyone do anything to
18 preserve any documents for Mr. Samenuk?
19 A Not that I know of.
20 Q The following day, did anyone do anything
21 to preserve any documents from Mr. Samenuk?
22 A Not that I know of.
23 Q How about two or three days later?
24 A I am not sure when people specifically
25 preserved documents from George, but from that day

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| <p>189</p> <p>1 questions.</p> <p>2 A Yes.</p> <p>3 Q You said you got downloads or updates</p> <p>4 about the process that was being conducted, correct?</p> <p>5 A That's right.</p> <p>6 Q And in those updates or downloads, they</p> <p>7 would -- folks would describe who the investigators</p> <p>8 for the Special Committee was talking to or</p> <p>9 interviewing?</p> <p>10 A No, not in detail. Not really, no.</p> <p>11 Q Okay, but --</p> <p>12 A It was really -- quite honestly, I had</p> <p>13 very little information other than the investigation</p> <p>14 is continuing, that we have at this stage reviewed X</p> <p>15 gazillion documents, and we have spoken to X amount</p> <p>16 of people. Occasionally, we might have heard who</p> <p>17 they had spoken to, but nothing about what that</p> <p>18 person said.</p> <p>19 Q Was there any discussion as to like how</p> <p>20 they set the parameters of the fence? By that, I</p> <p>21 mean what was in the investigation, what was outside</p> <p>22 the investigation? Was there any investigation</p> <p>23 about more stuff should be in, less stuff should be</p> <p>24 in?</p> <p>25 A The general fence was discussed. It</p> | <p>191</p> <p>1 MR. STRICKLAND: Let's not discuss what</p> <p>2 they asked on the grounds that that is -- we are</p> <p>3 going to take the position that is privileged and</p> <p>4 work product, but you can generally describe the</p> <p>5 content of what was the meeting</p> <p>6 A I discussed my initial option grant and my</p> <p>7 recollection of how it was granted, my recollection</p> <p>8 of who, if anyone, I talked to at that time, and the</p> <p>9 level of awareness I had about it being dated a</p> <p>10 different date than the actual board meeting.</p> <p>11 Q How did it go about this interview got</p> <p>12 scheduled on -- who handled the scheduling?</p> <p>13 A Initially, I was made aware that there</p> <p>14 were some director grants that had issues to them.</p> <p>15 I also believe Bob Buckham may have been</p> <p>16 present at that meeting with Howrey, also --</p> <p>17 Q Okay.</p> <p>18 A -- from the Special Committee, so it might</p> <p>19 have been four of us, I can't recall now. It was</p> <p>20 definitely Roman, and Bob Gooding and myself.</p> <p>21 Q Okay.</p> <p>22 A Bob Buckham may have been sitting in on it</p> <p>23 as well. I believe Bob Buckham might have been the</p> <p>24 one to tell me that Howrey would like to meet with</p> <p>25 me and talk about my options.</p> |
| <p>190</p> <p>1 wasn't so much as discussed as shared with us, and</p> <p>2 we agreed that it should go as far back as possible</p> <p>3 right to the present date, that it should include --</p> <p>4 be all inclusive on executives, both with us and who</p> <p>5 had previously been with us, and should include</p> <p>6 every option granted.</p> <p>7 Q Were you ever interviewed by any of the</p> <p>8 attorneys at the Howrey law firm?</p> <p>9 A Yes, I was.</p> <p>10 Q Was that a face-to-face meeting?</p> <p>11 A Yes, it was.</p> <p>12 Q Where did that take place?</p> <p>13 A Santa Clara.</p> <p>14 Q How many times were you interviewed?</p> <p>15 A Once.</p> <p>16 Q How long was the interview?</p> <p>17 A Approximately, 30 minutes.</p> <p>18 Q Did you have any -- did you have anyone</p> <p>19 with you during the interview?</p> <p>20 A No, it was -- I believe it was Roman</p> <p>21 Danner and Bob Gooding from Howrey, and I was alone,</p> <p>22 me and myself.</p> <p>23 Q And in the interview, what information did</p> <p>24 you provide?</p> <p>25 A They asked me about --</p> | <p>192</p> <p>1 Q And that was prior to sitting down?</p> <p>2 A It was probably several days to a week</p> <p>3 prior to sitting down --</p> <p>4 Q So -- I am sorry.</p> <p>5 A -- and then the meeting when we sat down</p> <p>6 was commensurate with that board meeting.</p> <p>7 Q Okay. All right. Did Mr. Buckham tell</p> <p>8 you anything else about the need for the</p> <p>9 investigations from the Special Committee to talk to</p> <p>10 you?</p> <p>11 A He told me that it looked like there was a</p> <p>12 mispricing on my initial grant.</p> <p>13 Q Okay.</p> <p>14 A Which, to my recollection, was I didn't</p> <p>15 think there was an error on it.</p> <p>16 Q What did you tell Mr. Buckham in response?</p> <p>17 A I said I thought my grant was right on the</p> <p>18 money.</p> <p>19 Q Okay.</p> <p>20 A And so I was at a loss on what could be</p> <p>21 erroneous. I checked when I got it, I knew it was</p> <p>22 25,000 shares, is what the Director of Comp was. I</p> <p>23 was Director of Comp. I believe it was done at the</p> <p>24 money and approved appropriately by the board, and I</p> <p>25 acknowledged it. I felt there was no room, why do</p> |

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| <p>205</p> <p>1 the outline of his remarks.</p> <p>2 Q All right.</p> <p>3 A All right.</p> <p>4 Q So it says that there is -- in some of the</p> <p>5 resolutions following extensive discussion, the</p> <p>6 board passed the following resolutions. One of them</p> <p>7 is the board accepting Mr. Samenuk's resignation; is</p> <p>8 that accurate, that is what happened?</p> <p>9 A Yes.</p> <p>10 Q And then it talks about appointing some of</p> <p>11 the directors, right?</p> <p>12 A That is right.</p> <p>13 Q Now, were you provided any guidance as to</p> <p>14 the -- were you provided any guidance regarding how</p> <p>15 to structure his separation agreement?</p> <p>16 MR. STRICKLAND: Object as ambiguous as to</p> <p>17 timing. He testified to some earlier. Do you mean</p> <p>18 something different or a different time frame?</p> <p>19 Q During this October 10th board meeting,</p> <p>20 were you provided any guidance by anyone as to how</p> <p>21 to structure the terms of Mr. Samenuk's separation</p> <p>22 agreement?</p> <p>23 A Yes.</p> <p>24 Q By who?</p> <p>25 A We got advice from Wilson Sonsini,</p> | <p>207</p> <p>1 later, fair?</p> <p>2 MR. STRICKLAND: Fair.</p> <p>3 BY MR. STEPHENS:</p> <p>4 Q Okay. The next one is Exhibit No. 63.</p> <p>5 MR. STRICKLAND: Okay.</p> <p>6 Q And this is a board meeting on</p> <p>7 October 23rd, 2006.</p> <p>8 So, Mr. O'Leary --</p> <p>9 A What was the last one?</p> <p>10 MR. STRICKLAND: This is 63, the last one</p> <p>11 was 62.</p> <p>12 THE WITNESS: They are both minutes of the</p> <p>13 same meeting?</p> <p>14 MR. STRICKLAND: No. I am sorry.</p> <p>15 THE WITNESS: Okay, fine. This is a</p> <p>16 regular board meeting.</p> <p>17 BY MR. STEPHENS:</p> <p>18 Q Mr. O'Leary, you should have in front of</p> <p>19 you an exhibit marked 63, which is draft minutes of</p> <p>20 a board meeting held on Monday, October 23rd, 2006,</p> <p>21 at -- in New York.</p> <p>22 A That is correct.</p> <p>23 Q Is that what you have in front of you?</p> <p>24 A Yes, I do.</p> <p>25 Q Okay. And you attended that meeting,</p> |
| <p>206</p> <p>1 particularly Jeff Saper.</p> <p>2 MR. STRICKLAND: Don't discuss the</p> <p>3 content.</p> <p>4 A We asked for -- given what we had learned</p> <p>5 at this meeting, we asked for advice on what our</p> <p>6 options were and what would be appropriate actions</p> <p>7 for a board in this situation.</p> <p>8 MR. STEPHENS: And then, Rod, so the</p> <p>9 record is clear, my understanding is that you are</p> <p>10 instructing the witness not to answer any questions</p> <p>11 about the advice that Mr. Saper provided regarding</p> <p>12 Mr. Samenuk's separation agreement at this board</p> <p>13 meeting; is that right?</p> <p>14 MR. STRICKLAND: Correct.</p> <p>15 BY MR. STEPHENS:</p> <p>16 Q Okay. Is it the same answer for any of</p> <p>17 the advice that the Howrey law firm provided</p> <p>18 regarding the special investigation?</p> <p>19 A It would be, yes.</p> <p>20 Q Okay.</p> <p>21 MR. STEPHENS: All right. So we obviously</p> <p>22 disagree on that.</p> <p>23 MR. STRICKLAND: Yes, we do.</p> <p>24 MR. STEPHENS: As opposed to spending a</p> <p>25 lot of time on the record, we will deal with it</p> | <p>208</p> <p>1 correct?</p> <p>2 A I did.</p> <p>3 Q And there was -- was this a meeting in</p> <p>4 which the -- Mr. Gooding, on behalf of the Howrey</p> <p>5 firm, provided or reported to the entire board about</p> <p>6 the investigation?</p> <p>7 A I believe so.</p> <p>8 Q Okay. Did he provide the board with any</p> <p>9 written materials to review?</p> <p>10 A No, almost throughout this, other than a</p> <p>11 board book saying "Special Committee Update," and I</p> <p>12 have submitted the search on those pages, almost</p> <p>13 zero was written or handed out.</p> <p>14 Q Have you ever seen any PowerPoint</p> <p>15 presentation?</p> <p>16 A Yes, I have.</p> <p>17 Q Was there a PowerPoint presentation used</p> <p>18 at this board meeting?</p> <p>19 A At this board meeting, I don't believe so.</p> <p>20 There was one in the October board meeting. I mean</p> <p>21 the earlier October 10th meeting.</p> <p>22 Q Okay. The really long one?</p> <p>23 A October 10th.</p> <p>24 Q And that board meeting took place in?</p> <p>25 A In Texas.</p> |

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1 Q In Texas?

2 A Yes.

3 Q So the record is clear, at the board

4 meeting on October 10th in Plano, Texas.

5 Mr. Howrey --

6 A Bob Gooding.

7 Q -- Mr. Gooding of the Howrey firm provided

8 or went through a PowerPoint presentation to the

9 board to describe kind of the scope of the work that

10 they had done, where they were in the investigation;

11 is that accurate?

12 A And their findings.

13 Q And their findings?

14 A Scope, process, findings.

15 Q So it is written down in a document, it is

16 just not written down in a document that was given

17 to you at the board meeting?

18 A Correct.

19 Q Have you ever seen a hard copy of that

20 document?

21 A Yes, I have.

22 Q When did you see a hard copy of that

23 document?

24 A My belief, early summer of '07.

25 Q In what context?

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1 A I had called Bob Gooding to say I would

2 like to reread the document that was presented to --

3 the PowerPoint that was presented to us in Texas.

4 Q Okay. Why?

5 A Just because between the Texas date and

6 early this summer, it was clear there was going to

7 be a fair amount of litigation around those events

8 and also significant consequences pretty much

9 expected, but nonetheless significant, were going to

10 occur, and I wanted to reread it.

11 Q Okay. And Mr. Gooding supplied it to you?

12 A I was offered the opportunity to visit

13 their offices in New York. You are an attorney,

14 this is your world.

15 Q Let me play this out.

16 A I was offered the opportunity -- after

17 some discussion, it was decided that the best

18 approach was for me to visit their offices in New

19 York, sit in a room, and read the document and leave

20 the room without any notes or a copy of the

21 document.

22 Q Were you allowed to take notes at the

23 meeting? I am sorry, were you allowed to take notes

24 during your review of the report in the Howrey

25 firm's offices?

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1 A No one specifically sat there and watched

2 me, but the basic agreement was or the advice from

3 counsel would be reading it is the best approach.

4 Q Okay. So did you take notes?

5 A No.

6 Q Okay. And you had the document there in

7 front of you --

8 A Right.

9 Q -- in the summer of 2007, at the law

10 offices of the Howrey firm here in New York?

11 A That is right.

12 Q And you provided it back to them and went

13 on your way?

14 A I literally went in, an associate provided

15 me the document in the room. I spent an hour or so

16 rereading the document. I closed the document and

17 went outside, handed the document back to the

18 associate and said thank you very much.

19 Q Was the -- PowerPoint slides usually have

20 page numbers on them. Was this one numbered?

21 A I don't recall.

22 Q Okay. Do you know if there were any gaps

23 in the document?

24 A I don't recall.

25 Q Would you have noticed if there was?

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1 A I think so. When I left, it certainly

2 seemed to me they provided me the full presentation

3 I had seen previously in Texas.

4 Q Okay. At their presentation in Texas, was

5 there any comment from anybody that the PowerPoint

6 presentation that was being provided to you was only

7 a portion of the document and not the full

8 PowerPoint presentation?

9 A No.

10 Q You thought you had the full presentation,

11 correct?

12 A It depends. We thought we got the full

13 presentation that was intended for the full board.

14 Q Right?

15 A We didn't expect that we were going to see

16 the full scope of data.

17 Q You are not going to get the 3 million

18 e-mails, right?

19 A Or even the briefings that the Special

20 Committee got. The purpose of the Special Committee

21 was to do all of that work and come to the core

22 findings that were appropriate for the board to

23 review and take action on it. So my belief was that

24 the Special Committee had reviewed with Howrey a

25 document that would be presented to the full board

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| <p style="text-align: right;">241</p> <p>1 Did Mr. Roberts say to you that he didn't</p> <p>2 believe he should be the legal counsel any longer</p> <p>3 during that conversation?</p> <p>4 MR. STEPHENS: Object to form.</p> <p>5 A I don't recollect him saying that, no.</p> <p>6 Q What do you recall about that topic?</p> <p>7 A My recollection was that toward the end of</p> <p>8 that discussion with him, he made some comments</p> <p>9 referring to functions he could -- he could pursue</p> <p>10 in the company other than general counsel, and that</p> <p>11 I left the meeting with the distinct impression he</p> <p>12 didn't realize he was going to be fired.</p> <p>13 Q Do you have a specific recollection that</p> <p>14 during your conversation with Mr. Roberts, he</p> <p>15 apologized to you for his actions in 2000?</p> <p>16 MR. STEPHENS: Object to form.</p> <p>17 A Absolutely. Absolutely.</p> <p>18 MR. COHEN: I have no further questions.</p> <p>19 MR. STEPHENS: I have got no questions on</p> <p>20 top of that, so from that -- from my perspective,</p> <p>21 Mr. O'Leary, I thank you for taking the time today.</p> <p>22 THE WITNESS: Thank you. Thank you,</p> <p>23 gentlemen.</p> <p>24 MR. COHEN: I thank you as well.</p> <p>25 THE VIDEOGRAPHER: The time is now 3:44.</p> | <p style="text-align: right;">243</p> <p>1</p> <p>2</p> <p>3 ACKNOWLEDGEMENT</p> <p>4 I, DENIS O'LEARY, hereby</p> <p>5 certify, I have read the transcript of my</p> <p>6 testimony taken under oath in my deposition</p> <p>7 of January 9, 2008, that the transcript is</p> <p>8 a true, complete and correct record of what</p> <p>9 was asked, answered and said during this</p> <p>10 deposition, and that the answers on the</p> <p>11 record as given by me are true and correct.</p> <p>12</p> <p>13</p> <p>14 DENIS O'LEARY</p> <p>15 Sworn and subscribed to before me</p> <p>16 this ____ day of _____, 2008.</p> <p>17</p> <p>18</p> <p>19 Notary Public</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |
| <p style="text-align: right;">242</p> <p>1 and this concludes today's deposition of Denis</p> <p>2 O'Leary on January 9th, 2008.</p> <p>3 (The deposition concluded at 3:44 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> | <p style="text-align: right;">244</p> <p>1 CERTIFICATE</p> <p>2 OF</p> <p>3 CERTIFIED SHORTHAND REPORTER</p> <p>4 * * *</p> <p>5</p> <p>6 The undersigned Certified Shorthand</p> <p>7 Reporter and Deposition Notary Public of the State</p> <p>8 of New York do hereby certify:</p> <p>9 That the foregoing Deposition was taken</p> <p>10 before me at the time and place therein set forth,</p> <p>11 at which time the Witness was duly sworn by me.</p> <p>12 That the testimony of the Witness and all</p> <p>13 objections made at the time of the Deposition</p> <p>14 were recorded stenographically by me and were</p> <p>15 thereafter transcribed, said transcript being a</p> <p>16 true and correct copy of the proceedings thereof.</p> <p>17 In witness whereof, I have subscribed</p> <p>18 my name this date, January 22, 2008.</p> <p>19</p> <p>20</p> <p>21 ANITA T. SHEMIN</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> |